

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
                                  )  
                                  )  
V.                              )                          CASE NO.: 05-30011  
                                  )  
LEE HENRY,                  )  
                                  )  
Defendant                  )

MOTION TO WITHDRAW APPEARANCE OF COUNSEL  
AND APPOINT NEW COUNSEL FOR PURPOSES OF  
PROSECUTING SENTENCE APPEAL

Now comes William J. O'Neil, attorney for the defendant, Lee Henry, who moves this Honorable Court for an order allowing him to withdraw his appearance as counsel for the defendant and to appoint counsel for the purpose of prosecuting his sentence appeal which was filed on February 6, 2006.

As grounds therefore, counsel has attached an affidavit hereto in support of this motion.

THE DEFENDANT,  
By His Attorney

Dated: February 13, 2006

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William J. O'Neil  
7 Stockbridge Street  
Springfield, MA 01103  
(413) 733-6821  
BBO# 548445

CERTIFICATE OF SERVICE

I, William J. O'Neil, Attorney for Lee Henry, do hereby certify that on February 13, 2006, I electronically filed a Motion to Withdraw Appearance of Counsel And Appoint New Counsel For Purposes of Prosecuting Sentence Appeal with the United States District Court for the District of Massachusetts using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

Todd E. Newhouse  
Assistant United States Attorney  
1550 Main Street  
Springfield, MA 01103

I certify that I have mailed by first class mail, postage prepaid, the documents electronically filed with the Court on the following non CM/ECF participant:

Lee Henry  
Hampshire County House of Correction  
205 Rocky Hill Road  
Northampton, MA 01060

Dated: February 13, 2006

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William J. O'Neil

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LEE HENRY,                  )  
                                  )  
Defendant                   )

AFFIDAVIT OF WILLIAM J. O'NEIL

William J. O'Neil, on his oath, deposes and says as follows:

1. My name is William J. O'Neil and I was appointed to represent the defendant, Lee Henry on March 23, 2005.
2. On August 24, 2005 and September 7, 2005, I appeared in this Court on behalf of the defendant with respect to his motion to suppress evidence.
3. On October 7, 2005, the defendant pled guilty to the charge which is the subject of this indictment.
4. On January 27, 2006, the defendant was sentenced on this indictment.
5. On January 27, 2006, the defendant indicated to me his desire that I file an appeal of his sentence. At that time, I intended to file said notice of appeal and to handle the appeal on behalf of the defendant.
6. On February 6, 2006, I received a letter from the defendant indicating that he intends to request that his guilty plea, entered on October 7, 2005 be withdrawn based on the grounds of ineffective assistance of his counsel.
7. If the defendant now claims ineffective assistance of counsel, then I believe there exists a conflict of interest in me representing the defendant in his sentence appeal.
8. Accordingly, I believe that it is in both my interest and the defendant's if I be allowed to withdraw as counsel and that new counsel be appointed to represent him in his sentence appeal.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY on this 13<sup>th</sup> day of February, 2006.

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William J. O'Neil